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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/617,376	07/17/00	HAYNIE	D T8098.CIP

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EXAMINER	
WILSON, P	
ART UNIT	PAPER NUMBER

3749

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DATE MAILED: 09/18/00

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/617,376</b>	Applicant(s) <b>Haynie</b>
	Examiner <b>Pamela A. Wilson</b>	Group Art Unit <b>3749</b>

- Responsive to communication(s) filed on papers filed on 7/17/00
- This action is **FINAL**.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- Claim(s) 1-21 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) 1-21 is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of References Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

**PAMELA WILSON**  
**PRIMARY EXAMINER**

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the sixth paragraph of 35 U.S.C. 112:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material or acts described in the specification and equivalents thereof.

Claims 1-21 are rejected under 35 U.S.C. 112, sixth paragraph, as containing subject matter which include functional recitations which are not given patentable weight because each of these recitation is presented in a narrative form. In order to be give patentable weight, a function recitation must be expressed as “a means” for performing the specified function, and further, must be supported by the recitation in the claim of sufficient structure to warrant the presence of the functional language. Accordingly, the applicant’s use of the phraseology “configured to” is considered to be functional language.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-3, 6-11, 14-17 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelly (U.S. Patent No. 5,655,255). The invention of Kelly presents a vacuum head device for removing fluid from a carpeted surface which comprises an elongated base 16 having a tapered cross section 28. The tapered cross section includes an array of apertures 40 wherein the apertures are wider at the upper end and narrower at the lower end, and the apertures form protrusions for extending from the base plate.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5, 12-13, and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (U.S. Patent No. 5,655,255). As stated above, the invention of Kelly presents a vacuum head device for removing fluid from a carpeted surface which comprises an elongated base 16 having a tapered cross section 28. The tapered cross section includes an array of apertures 40 wherein the apertures are wider at the upper end and narrower at the lower end, and the apertures form protrusions for extending from the base plate.

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In regards to the limitations which recite that "the protrusions have a total surface area between the apertures less than a total area of the apertures" and "wherein each of the protrusions have a width between the apertures less than a width of the apertures", the specification contains no disclosure of either the critical nature of these claimed limitations or any unexpected results arising therefrom. Hence, these aforementioned limitations are considered to be arbitrary and therefore obvious. Such unsupported claims cannot be a basis for patentability, since where patentability is said to be based upon the significance of the structure of the protrusions and apertures as presented in the claim language, and thus, the applicant must show that these limitations are of a critical nature. Accordingly, one having ordinary skill in the art would have been able to determine through optimization or routine experimentation the dimensions of the protrusions and apertures for the application of allowing liquid to be vacuumed from a carpeted surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pamela Wilson whose telephone number is (703) 308-2620.

paw  
September 12, 2000

  
**Pamela A. Wilson**  
**Primary Examiner**